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TAGS: [PGOV](#) [PREL](#) [UP](#)
SUBJECT: ELECTION BATTLE SHIFTS TO THE COURTS AND ELECTION
COMMISSION

Classified By: Deputy Chief of Mission James Pettit for reasons 1.4(b,d
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SUMMARY

11. (C) On October 10, a Kyiv District Administrative Court suspended President Yushchenko's decree dissolving the Rada and ordered the Central Election Commission (CEC) to halt election preparations. In response, Yushchenko appealed the decision to the Administrative Court of Appeals, fired the administrative judge who suspended his decree, and issued a decree disbanding the District Administrative Court. The Appeals court is expected to rule on October 17. MPs from Tymoshenko's faction blocked the lobby of the Central Election Commission in response to Yushchenko's actions. To add to the political theater, the President dispatched the elite Alpha Force to guard the Commission building and Appeals Courts. The CEC is abiding by the initial court order and is not actively preparing for elections. CEC contacts say that a December 7 election date now appears unlikely. End Summary

THE COURTS WEIGH IN AND YUSHCHENKO STRIKES BACK

12. (SBU) A Kyiv District Administrative Court agreed on October 10 to review charges by PM Tymoshenko's BYuT faction that the timing of Yushchenko's October 8 decree dissolving the Rada was improper. The Court's action had the effect of suspending Yushchenko's order -- and election preparations -- for the duration of the review. The Court did not consider the overall constitutionality of the decree itself. Yushchenko struck back at the ruling on two fronts. First, he appealed the suspension of his decree to the Kyiv Administrative Court of Appeals. The Court was set to convene on October 14, but, citing undue political pressure, it postponed the hearing until October 17. Second, Yushchenko fired the judge at the Kyiv District Administrative Court who agreed to review BYuT's claim and disbanded the Kyiv District Administrative Court itself. Analysts note that the dissolution of the court may have been unconstitutional since both the Prime Minister and the chairman of the High Administrative Court need to sign such a decree but have not done so.

THE SBU ARRIVES

13. (U) Yushchenko dispatched the Presidential Guard Service and Security Service of Ukraine (SBU) Alpha troops to protect the Kyiv Administrative Court of Appeals and the Central Election Commission (CEC). SBU Acting Chairman Nalyvaichenko said that Presidential guard service and SBU troops were needed because groups of BYuT MPs threatened and abused judges at the Appeals court, were blocking the office of the chairman of the High Administrative Court, and were impeding the work of the Central Election Commission. TV cameras

captured a scuffle outside the CEC on October 14 as BYuT MPs tried to bypass SBU troops blocking the entrance. Both sides are crying foul and blaming the other for the scuffle.

CEC: BUSINESS AS USUAL, BUT DECEMBER 7 ELECTION UNLIKELY

14. (C) CEC Deputy Chairman Andrii Magera told us October 15 that the scuffle at the CEC did not impede the commission's ability to work. In fact, it took place in the building lobby: the commission is on the sixth floor. Magera dismissed the incident as "political theater" staged for the television cameras and for public consumption. A Directorate of State Protection guard (the directorate is under the presidential secretariat) with a regular duty station at the CEC told us that the incident was "not a big deal" and "was over by lunch."

15. (C) Magera said that there is little chance that elections will be held on December 7. On the legal front, the commission was abiding by the District Administrative Court ruling suspending Yushchenko's decree and prohibiting the CEC from preparing for elections. Magera said that a majority of the commissioners did not want to risk ignoring a court decision, so they would wait for the Appellate court decision on October 17. Magera also stressed that the CEC would have needed to start preparations by October 11 "at the latest" to prepare sufficiently secure ballots and other procedures to ensure a free and fair election on December 7. If they received funding and a green light on October 17, December 14 is the earliest an election could be held. He said that the CEC would be prepared to carry out an open and transparent election, but that Tymoshenko, Yushchenko and other political

leaders needed to form political consensus on a date or the election "will stay tied up in the courts."

COMMENT

16. (C) The Ukrainian public seems to be taking the incidents at the Court and the CEC in stride. It is, after all, a rerun of events preceding the 2007 Rada elections. A court ruling favorable to BYuT would likely only delay the elections, as Yushchenko could re-issue his decree in accordance with the date set by the court. Continuing legal maneuvering casts doubt that the election will take place on December 7.

TAYLOR